

DWIGHT L. KING
SCOTT E. ISAACSON*
THOMAS R. KING

*ALSO MEMBER COLORADO BAR

KING & ISAACSON
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
SUITE 205, SENTINEL BUILDING
2121 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84115

orig mine file
291
cc T. Mitchell
W. Hedberg
W. Hedberg
W. Hedberg
TELEPHONE
(801) 486-8701
TELECOPIER
(801) 486-8704

RECEIVED
JAN 22 1991

DIVISION OF
OIL, GAS & MINING

January 21, 1991

Mr. Gregory P. Williams, Chairman
Board of Oil, Gas and Mining
State of Utah, Department of Natural Resources
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: Thomas American Stone; Aragonite mine, Tooele County,
Utah

Dear Mr. Williams:

I represent Thomas American Stone, a Utah corporation, and it has requested that I write to you concerning American Stone's aragonite mine, located in Tooele, County, Utah.

This letter is prompted by the actions of Mr. Richard W. White, who has been in contact with your office several times over the last month and has been reporting various alleged violations by American Stone. We felt it would be important for your files and records to have complete copies of the relevant documents and a statement of the facts regarding this situation.

Before going into the background of these problems, I want to assure you that American Stone has every intention of complying with all relevant rules and regulations, contrary to the assertions of Mr. White. American Stone has filed with the Division two notices of intention to commence mining operations. We have met with your engineers and American Stone is willing to comply with the rules and regulations. I will give more detail below on the background of American Stone's alleged failure to comply.

First, however, I need to provide some general background.

The Aragonite mine has been mined for over 100 years. American Stone purchased the mine in approximately 1976. American Stone is a wholesale and retail distributor of decorative and industrial stone. It has for many years operated a sales office and lot in Murray, Utah. It obtains stone from many sources, and from Aragonite, it obtains white aragonite,

Gregory P. Williams
January 21, 1991
Page 2

sometimes called onyx.

In 1988, American Stone entered into an agreement to sell the Aragonite mine, including patented and unpatented mining claims, a mill and millsite claims, to Messrs. White and Oldfield, as joint tenants. The parties signed a Sale Agreement, a copy of which is attached hereto.

White and Oldfield were to pay \$1,000,000 for the property, \$50,000 as a down payment, and the remainder in installments over 5 years, with the entire balance due in April 1993. American Stone retained a trust deed on the mining claims and real property and security interests in the equipment as security for White and Oldfield's obligations under the sale agreement. White and Oldfield then entered into possession of the property in April 1, 1988.

In August, 1988, White and Oldfield approached Thomas and stated that they had been unable to get the operation going and the parties decided to enter into a "Lease-back Agreement." The parties wrote up a handwritten "outline" of such an agreement, which was supposed to be replaced by a formal agreement, but never was. I have attached a copy of this "Outline of Lease Back Agreement," along with a typewritten transcription. Please note that this outline states that if White and Oldfield breach the agreement "the mine reverts to Lon Thomas."

American Stone retook possession under the "Lease-back Agreement" in August, 1988. Soon after taking possession back, American Stone discovered that White and Oldfield had breached the Sale Agreement in several ways. First, they had encumbered all of the mining equipment and mill. Within one week after signing the Sale Agreement, in which they pledged to keep all the collateral free of liens, they used the mine equipment as collateral for a loan in the amount of approximately \$130,000 from "Perry Morris," a California equipment leasing company. Then White and Oldfield failed to make payments to Perry Morris. Perry Morris obtained a writ of replevin from Tooele County and sought to take back all of the Aragonite mine and mill equipment. Eventually, American Stone had to pay Perry Morris over \$10,000 in order to keep the equipment. This was equipment that American Stone had previously owned free and clear before White and Oldfield wrongfully encumbered it.

There were various other breaches of the Sale Agreement, which I will not enumerate here. In December, 1988, American Stone terminated the "Lease-back Agreement." See the letters attached hereto.

Gregory P. Williams
January 21, 1991
Page 3

On March 31, 1989, American Stone brought legal action against White and Oldfield to foreclose on the trust deed and for other damages. This case has been and still is pending in federal court, case #89C752S before Judge David Sam. All the breaches of White and Oldfield are set forth in the complaint, a copy of which I have attached hereto.

White and Oldfield have never made any further payments under the Sale Agreement since April 1988, when they made the down payment. White has failed to pay or to perform any of the obligations required of him under the agreement. White even failed to pay the people he hired during the summer of 1988. American Stone ended up having to pay White's employees and pay for various other costs incurred by White.

Soon after the case was filed, the parties attempted to negotiate settlements of the lawsuit. On two different occasions, American Stone, at great legal expense, prepared elaborate settlement agreements in good faith negotiations with White and Oldfield, signed the settlement agreement and sent it to White. In each case, White refused to sign the settlement agreement at the last minute.

Eventually, American Stone did reach a settlement with Mr. Oldfield. Oldfield conveyed all of his right, title and interest in the property to American Stone, and American Stone has dismissed its claim against Oldfield. A copy of Oldfield's deed to American Stone is attached hereto.

Thus, the current title situation for these mining properties is that American Stone owns a one-half undivided interest; White owns the other one-half undivided interest, and White's interest is subject to a first trust deed in favor of American Stone, and a suit is pending foreclosing that trust deed. Contrary to White's allegations, White is not the owner and American Stone, the lessee. American Stone is an owner of an undivided one-half interest and is in legal possession of the property. These facts can be confirmed in the Tooele County real estate records.

Mr. White has followed a pattern of delaying the foreclosure litigation through every means possible. He was originally represented by Ms. Joyce Maughan, an attorney here in Salt Lake, but she withdrew from representing him, and he has represented himself for over one year. He has failed to comply with two orders from the court to produce documents and respond to written discovery requests. He is currently in contempt of court. A

Gregory P. Williams
January 21, 1991
Page 4

motion is pending for sanctions against him. If you have any questions concerning the status of the case, I urge you to call Federal Magistrate Ronald Boyce, who has been handling the case.

At one point, Mr. White purported to sell his interest, without the prior written consent of American Stone as required by the Sale Agreement, to an entity known as Symcol Enterprises, Ltd. Symcol was thereafter added as a joint defendant with Mr. White to the lawsuit. Symcol has to date provided three incorrect addresses to the court. It is my understanding that Symcol is a Canadian "shell" corporation, organized by Mr. White in an attempt to further delay and complicate the litigation. Symcol has also failed to respond to written discovery and its counter claims have been dismissed by the court.

On March 10 and 14, Mr. White went onto the property and purported to locate four new claims on top of the ones being foreclosed in the lawsuit.¹ He then sold and mortgaged these claims to third parties. This has further complicated and delayed the lawsuit.

On December 13, 1990, Mr. White was facing deadlines and a hearing in the court so he filed bankruptcy in Utah bankruptcy court. He also filed with the federal court an affidavit in which he claimed he was totally insolvent, and lacked any funds to pay the penalties the court had ordered him to pay for his failures to comply with the court's orders.

Then White failed to file any schedules or lists of creditors as required by the bankruptcy laws and he failed to appear at his first meeting with the trustee and his creditors. The trustee dismissed his bankruptcy on January 13, 1991. The trustee was Paul Toscano, and if you need confirmation of these facts, please call him.

I could go on with more details, but suffice it to say, that American Stone has been attempting for nearly two years to foreclose its trust deed against White in an ongoing court action. At some point he will either have to pay for what he has purchased or be foreclosed.

In December, 1990, White was up against several deadlines in

¹Also in March, 1990, someone went onto the property and vandalized American Stone's mining equipment, causing over \$150,000 in damage. The gas tanks, oil and hydraulic fluid reservoirs of several items of equipment were filled with sand.

Gregory P. Williams
January 21, 1991
Page 5

the lawsuit, and in another move of delay and desperation, he apparently approached every state and federal agency he could think of and has lodged spurious complaints. He has tried to use state and federal agencies to harass American Stone because he will eventually lose in the courts.

White approached the State tax office and wrongfully alleged that American Stone was not paying its withholding tax. They came out and audited, and found White's claims to be totally groundless. White has apparently gone to county, state and federal agencies of every type, including state business regulation and others. He accuses American Stone of violating immigration laws, tax laws, mining and environmental laws and anything else he can think of.

The fact is, however, that American Stone has been a viable and valuable Utah company and employer for many years. Its operations are all open to any scrutiny.

White, on the other hand, appears to have no visible means of support, has numerous judgments and lawsuits against him and no assets, by his own sworn affidavit.

I have seen the letters, and the request for agency action which White has filed with your office. American Stone can answer every single allegation that White has made. This entire effort is an effort to move his losing lawsuit into state and federal agencies.

I will make my entire file on White and the lawsuit available to you. There have been to date over one-hundred pleadings, motions and documents filed with the court. The file is several feet thick. You are free to examine it or have one of your attorneys examine it.

I give you this background so that you can place White's allegations into their proper context. Now I will respond to the claim that American Stone has been operating an un-permitted mine.

It is true that American Stone had not filed applications under the Utah Mined Land Reclamation Act. There is a very simple explanation. Aragonite was operating under a valid exemption prior to the change in the law and regulations, in 1988. I have reviewed the file with your engineers and they confirm this. As you know, the law changed in December, 1988, for companies holding exemptions. However, your files show that American Stone's notice of the change was sent to an incorrect

Gregory P. Williams
January 21, 1991
Page 6

address and returned unclaimed. Therefore, American Stone did not receive notice of the change in the law. American Stone has properly filed notices for its other small mining operations in Utah. American Stone simply thought Aragonite was exempt, and until December, 1988, it was.

As I mentioned above, American Stone is in the building stone business, and not in the traditional mineral mining business, and thus was honestly not aware that its exemption for Aragonite was no longer valid. American Stone understands that this failure of notice is not a legal defense, but merely wants you to understand the practical reason why it did not have a permit.

American Stone has already filed with your office two notices of intention of commence small mining operations for the Aragonite mine operation. American Stone has agreed to be responsible for all reclamation of areas it has disturbed since December 1988, and to fully cooperate with your office in all future operations.

I understand that Mr. White took people from your office and the BLM out to the property and led them on a "guided tour" of the alleged violations of American Stone. We request that you take White's allegations with a grain of salt. It is a fact that Aragonite is a very old mining district, and that there are high walls, shafts, and other disturbances that would never be allowed under modern mining regulations. However, most, if not all, of those disturbances were there many years before American Stone began its operations. You should also know that American Stone has many times attempted to put up fences, barriers, signs and other warning devises. However, because of the easy access to this area, and the seasonal nature of the mining, the area is heavily vandalized.

American Stone has been inspected and monitored for many years under federal MSHA regulations and is operating with their approval of its current mining operations.

The bottom line for your office, however, is that American Stone will comply with applicable State rules and regulations. We will need to work closely with your engineers because of all the old workings, but American Stone has every intention of working with you.

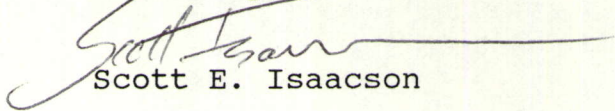
As for Mr. White, I urge you to let the federal court take care of his claims in the present lawsuit. He should not be allowed to use your good offices to further his delays and

Gregory P. Williams
January 21, 1991
Page 7

evasions. I would urge you to consider American Stone's applications just as you would any miner's application, work with American Stone to come up with a reclamation plan that they can live with, but do not let White use your procedures to re-fight the lawsuit.

I will be pleased to meet with you or your legal counsel at any time to discuss this matter further. I look forward to working with you to resolve this unfortunate situation.

Sincerely,



Scott E. Isaacson

cc: Mr. Lon Thomas